

Applicants: Bearcroft et al.

Atty Docket: P01952US0

Title: Shaped Particle and Composition
 For Bone Deficiency and Method
 Of Making the Particle

Customer No. 26271

Application No.: 09/517,981

Examiner: Pellegrino, B.

Filing Date: March 3, 2000

Group Art Unit: 3738

Assistant Commissioner for Patents
 Washington D.C. 20231

RESPONSE TO RESTRICTION REQUIREMENTAND PRELIMINARY AMENDMENTS

Dear Sir:

This is in response to the restriction requirement issued July 24, 2001. Applicants submit
 this response on October 24, 2001, making this a timely filing.

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RESPONSE

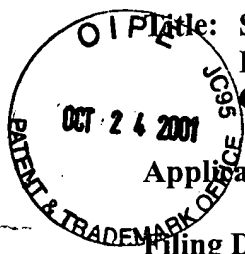
Claims 1-63 are pending in the application and are subject to a restriction/election
 requirement. The Examiner states that Applicants are required under 35 U.S.C. 121 to elect a
 single disclosed species and subspecies for prosecution on the merits to which the claims shall be
 restricted if no generic claim is finally held to be allowable. Furthermore, the Examiner states
 that currently no claims are generic.

Applicants traverse the restriction and furthermore assert that the Examiner has set forth
 an improper genus/species election. The broadest independent claim covering the particle, claim
 1, is a generic claim to claims 2-26 because it is generic for the particle, and dependent claims 2-
 25 are species of the particle. For example, some detail the material from which the particle is
 made. This is a classic genus/species relationship as described in MPEP §§ 806.04(d) and
 806.04(e).

In keeping with Applicants' assertion, Applicants elect the species of the particle being
 ceramic (new claim 64; see Preliminary Amendment below) as the elected species. Support for
 this claim is in claim 4. It is a species of claim 1 as it is a composition of the particle of generic
 claim 1.

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In the event that the Examiner maintains the present restriction, Applicants elect Species A and Subspecies I as defined in the Action and submit that the claims readable thereon are claims 1-19 and 26.

Applicants will refrain from canceling any claims until the restriction issue is resolved.

PRELIMINARY AMENDMENT

Please replace the original claim 5 with the following claim 5. Please add new claim 64.

a¹ 5. (Once Amended) The particle of Claim 4 wherein said ceramic is comprised of a calcium salt.

a² 64. (New) The particle of Claim 1, wherein the particle is ceramic.

Applicants owe a fee of \$18.00 for new claim 64. Applicants assert no other fees are required. Applicants hereby authorize withdrawal from the standing account of Fulbright & Jaworski L.L.P. 06-2375 under Order No. 10004751 for \$18.00 and, if additional fees are required at any time during prosecution of this application, please also charge them to this account.

Respectfully submitted,

Melissa L. Sistrunk

Melissa L. Sistrunk
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Date: Oct. 24, 2001
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